Journal of Multi-Disciplinary Legal Research

Analysis of Doctrine of Benefit of Doubt Apropos to Criminal Philosophy

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Abstract

In our country, it is observed that the conviction rate is low, and it is the lowest if we talk about rape. A person who is accused of rape charges mostly gets acquitted because of the doctrine of benefits of doubt. Moreover, even in the case of gang rape, rape of minor the predators are not convicted because of the doctrine of benefit of the doubt. Thus, this paper revolves around the concept of the doctrine of benefit of the doubt and expounds on the pros and cons of this theory with respect to criminal philosophy. This paper mostly focuses on rape and the benefit of the doubt and tries to show that it is unjustified to use it in every case and using it every time can lead to miscarriage of justice.

This paper also talks about the epistemic and testimonial injustice in rape cases that is happening around the world. It is observed that the complaint of rape is mostly not lodged because of the conventional mindset of people, and even if the victim gathers the courage and lodges the complaint the trial continued for months. During this phase, the victim is pressured to change her statement and several manipulations are done. After this tedious and long-time, our criminal justice system demands to prove it beyond a reasonable doubt, which stands totally unreasonable. Because of the pressure and epistemic injustice proving beyond reasonable doubt becomes a myth, and the theory of benefits acts as a catalyst in causing the miscarriage of justice. The paper also makes a comparative analysis with most of the countries' the trial law and discusses the India's condition in this aspect.

Thus, the main question which this paper raises is whether the theory of benefit should be used in all of the cases and whether this theory is causing miscarriage to justice. At last, the paper also gives certain suggestions pertaining to the topic.

Keywords- benefit of the doubt, miscarriage of justice, proving beyond a reasonable doubt, manipulation, criminology

Introduction

It is said by Blackstone, in his Commentaries, "the law holds that it is better that ten guilty persons escape than that one innocent suffer"[1]. Indian criminal jurisprudence has inherited this principle and relies on it as a ground rule and because of this one presumption is made, that is, an accused is considered innocent till it is proved beyond a reasonable doubt in order to establish the guilt of the accused, etc. it is also seen that if there are any doubts in the mind of the jury then the benefit of the doubt is always given to the accused and the accused is left acquitted, and the case is closed. Henceforth, the main question arises whether giving the benefit of the doubt in each and every case is justifiable, and in the era where proving beyond a reasonable doubt is a myth, acquitting them is causing miscarriage of justice? In the age of hi-tech technologization, it is extremely easy to make a small doubt in the judge's mind, leaving the entire criminal justice system to ponder around.

History of Benefit of Doubt

If we see the roots of the benefit of the doubt then, we will realize that it came out because of the fear of damnation possessed by the judge for convicting an innocent. According to Whitman, "The reasonable doubt formula was originally concerned with protecting the souls of the jurors against damnation[1].Whitman further explains, "Convicting an innocent defendant was regarded, in the older Christian tradition, as a potential mortal sin. The reasonable doubt rule was one of many rules and procedures that developed in response to this disquieting possibility. It was originally a theological doctrine, intended to reassure jurors that they could convict the defendant without risking their salvation, so long as their doubts about guilt were not 'reasonable"[2] Thus, it is evident

[1] James Q. Whitman, The Origins of Reasonable Doubt 4 (2008). https://judicature.duke.edu/articles/taking-beyond-a-reasonable-doubt-seriously/
[2] Ibid

that it was an outcome of a god-fearing and ancient law that mandated the jury to act. However, in the contemporary world where it is easy to tamper with evidence, this ancient concept is causing miscarriage of justice.

The Basic Function of Law

If we analyze the definition and function of law, then it is evident that the function of law is to regulate society by imposing sanctions so that the primary discipline of society is not violated. However, if we give a prudent look then, we will realize that the benefit of the doubt given to the accused and proving beyond all the reasonable doubt in each and every case is falling contradictory to the basic function of law.

What is the function of criminal law?

The basic function of criminal law is to help maintain social order and stability.

The New York criminal code sets out the basic purposes of criminal law as follow[3]

• Harm-In order to prohibit the act that will causes harm to individuals and to society.

• Warning-In order to warn people by setting the example by punishing the offenders.

• Definition-To define the act and intent that is required for each offense

• Punishment-To punish the law offenders that satisfies the feeling of revenge, rehabilitation, and deterrence of future crimes

• Victims-To ensure that the victim and the family of the victim gets justice

If we analyze both the principles after considering all the above-mentioned functions the 2 principles is diluting the whole function of law. Henceforth, as it is diluted, the conviction rate in rape cases is law because of tampering with the evidence and thus causing great injustice in the society.

[3] Joshua Dressler, Understanding Criminal Law, 3rd ed. (New York: Lexis, 2001), pp. 1–32. A good introduction to the nature of criminal law and to the common law and statutes. https://www.sagepub.com/sites/default/files/upm-binaries/30388_1.pdf

School of Thought

1. Historical School of Law

According to the historical law school of law, Law should be according to the changing needs of the people and society. Thus, the concept that was propounded by Blackstone that says that "the law holds that it is better that ten guilty persons escape than that one innocent suffer" was a very old concept, the concept lived in that time when the technology was not high tech. Henceforth, the law is dynamic, and it cannot be static; it has to be according to the changing need of the society so that the miscarriage of justice does not happen.

2. The classical school and Rational Choice theory

This school follows the idea propounded by Bentham, which suggests that man is a calculating animal and only punishments can deter his acts. Thus, so long as the punishment is proportional to the crime, society will function well. Humans and 'rational calculators' who weigh and analyze the costs and benefits of every action. Thus, in today's scenario. The same principles were followed by Rational choice theory, propounded by Cesare Beccaria.

3. Positive School

Positivist schools suggest that criminals are not born as a criminal but created by society. A part of the social positivist school talks about Social Positivism, which is often referred to as Sociological Positivism; it conceptualizes the thought process that criminals are produced by society. Henceforth, if the criminals will see and observe that because of a small doubt the rapist and heinous law offenders are set free then it will vanish the fear from their minds.

4. De Minimis

This principle says that conduct should not be criminalized if the effect of doing so would be bad or worse. In the present scenario, we acquit the offenders because of mere doubts, then its effect would worsen the society, and more rapes would happen.

Current Miseries

1. A Slow Process of Law

It is known by everyone that the Indian judicial system is tardy and dilatory. It is because of the slow investigation, sparingly followed law, other atrocities. Moreover, the establishing of the charge against the accused beyond all reasonable doubt gives a lot of undue benefits to the accused and leads to miscarriage of justice.

In the Nirbhaya rape case, the crime was committed long back and the rapists were hanged after 7 years and it was because of the benefit of the doubt given to the accused, proving beyond reasonable about and tardy judicial process. In Nirbhaya's case, everything was crystal clear however it got so delayed. This gives confidence to the offenders to commit a similar crime like this.

2. Cases that are not reported

It is said by Ashutosh Varshney a professor of Brown University that A woman's body as the site of cultural purity is the predominant theme in the epics and dishonoring a woman is equal to dishonoring a family and even a culture."[4] This mindset is rooted inside every household of the Indian family as a result, the police and elders often see their first duty after rape as protecting a woman's modesty and a family's honor instead of giving her justice. Henceforth, the cases are not reported.

3. Less conviction of rape cases

[4] For Rape Victims in India, Police Are Often Part of the Problem https://www.nytimes.com/2013/01/23/world/asia/for-rape-victims-in-india-police-are-often-part-of-the-problem.html

In 2018 and 2019, the conviction rate for rape was below 30%. This means out of 100 cases, and only 30 saw convictions[5]. Apart from the benefit of the doubt, the absence of forensic labs, fast-track courts, and investigators are also partly responsible for this. On average, 88 rapes take place every day in India, according to the National Crime Records Bureau (NCRB) data for 2019.

However, the conviction rate is as low as 27.8%. This means, out of 100 accused, only 28 get convicted[6]. Reasons such as hostility of witnesses, poor police investigation, complainants, and familial pressure on the victim also play a role. Supreme Court had observed that 90% of rape cases end in acquittal same.in the case of H N Gadhvi versus State of Gujarat supreme court rebuked a victim of rape because, during the trial in the lower court, she took her complaint back against the rapist and said that no such incident took place[7]. Based on her changed statement, the trial court acquitted the accused. While deciding on the appeal, an annoyed supreme court judge not only convicted the accused but also expressed deep anguish over the victim's behavior. The court stopped just short of prosecuting her.

Thus, most acquittals happen because of the hostility of witnesses and complainants. There are legal provisions to prosecute such people for perjury but these are rarely used and are difficult to prove.

In 2 cases Jessica Lal[8] and Priyadarshini Mattoo[9] murder cases we have witnessed the trial court had to let the accused go because crucial witnesses turned hostile. While delivering the judgment in the Mattoo case, the judge said that he was forced to acquit the accused who had committed the murder. The appellate court convicted the accused because of the media trial.

4. Taking the compliant back

[5]https://google.com/url?sa=D&q=https%3A%2F%2Ftimesofindia.indiatimes.com%2Findia%2Findia-sees-88-rape-cases-a-day-but-conviction-rate-below-30%2Farticleshow%2F78526440.cmshttps://google.com/url?sa=D&q=https%3A%2F%2Ftimesofindia.indiatimes.com%2Findia%2Findia-sees-88-rape-cases-a-day-but-conviction-rate-below-30%2Farticleshow%2F78526440.cms

[6]https://www.newindianexpress.com/nation/2020/oct/03/under-30-per-centconviction-rate-in-rape-cases-in-india-says-ncrb-data-2205090.html

[7]https://google.com/url?sa=D&q=https%3A%2F%2Fwww.newindianexpress.com%2Fnation%2F2020%2Foct%2F03%2Funder-30-per-centconviction-rate-in-rape-cases-in-india-says-ncrb-data-2205090.html

[8] Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1

[9] 2007 CriLJ 964, 133 (2006) DLT 393

It has been observed that even the police itself advise women to take away their complaints. In the real instance that happened in Madhya Pradesh in which a girl was raped by the 3 men, she said that police beat her and detained her father asking them take way the rape charges[10]. The Criminal Law (Amendment) Act, 2013 makes police failure to register a complaint of rape a crime, punishable with up to two years in prison. But there is no record of a police officer being charged under the provision.

In many rape cases, the police spend more time seeking reconciliation between the attacker and the victim than investigating the facts.

On Dec. 26, an 18-year-old Punjabi woman committed suicide after police officers refused for five weeks to arrest the men who were suspected of gang-raping her and instead pressed her to marry one of the men. So many Indian women end up marrying their rapists that the police often squander the first hours and days after a woman reports a rape seeking just such a resolution, said Ravi Kant, president of Shakti Vahini, a nonprofit advocacy group[11].

5. Patriarchal society

Rape culture finds its roots in deep-rooted patriarchy. In some parts of India, Sexual harassment and rape have normalized, and men think they should not be treated as law offenders when they commit Rape. In 1993, a pioneering book named Transforming a Rape Culture was published and the authors of define rape culture as "a set of beliefs that encourages sexual aggression of men and supports violence against women. It is a society where women perceive a continuum of threatened violence that ranges from sexual remarks to sexual touching to rape itself."[12]

Suggestions

1. Strict Laws and their abidance

There are certain countries in which rapes and sexual harassment laws are stricter and the laws are not dormant, unlike India, for example, China has a strict law for rapists. They punish rapists are

[10] https://www.hrw.org/news/2017/11/08/how-police-pressured-young-woman-taking-back-her-rape-complaint#)
[11] https://www.nytimes.com/2013/01/23/world/asia/for-rape-victims-in-india-police-are-often-part-of-the-problem.html
[12] https://digitalcommons.sacredheart.edu/wac_prize/30/

punished with a death sentence or castration. In Saudi Arabia, if a person is found guilty of rape, then they are beheaded in public[13]. Thus, in India also the law should not be kept closed inside the books but it should be implemented so that it deters the rapists to commit rape.

2. Quantification of Reasonblity of Doubt

There is a new concept that has been evolving lately i.e. Quantification of Benefit of doubt[14] .. Thus, Professors Tillers and Gottfried refer to 'quantification of the reasonable doubt standard in terms of odds, probabilities or chances' and provide an example of an instruction that permits a juror to convict 'only if the juror believes that there is more than a 95% chance that the defendant is guilty.[15]Professor Franklin suggests that 'any probability less than 0.8 should be declared less than proof beyond a reasonable doubt in all circumstances. Legal jurors have been ignoring this concept of quantification of reasonable doubt and acquitting the offenders. Thus, it is recommended that this concept should be brought in India so that there is no miscarriage of justice in the disguise of proving beyond reasonable doubt.

Conclusion

In India, it is observed several times that the accused set free making a mockery out of the legal system because the case was unable to be proved beyond a reasonable doubt. This is causing miscarriage of justice and setting the wrong example in the society that will act as a catalyst and make the offenders fearless. To deter rapes, cases of heinous nature should be expedited all the way through different levels of the judiciary and offenders should not be easily acquitted. Henceforth, the judiciary needs a revolution and it should shed all the past precedence and ideologies. New mechanisms such as quantification of the benefit of the doubt should be introduced in the Indian trial. Furthermore, the benefit of the doubt should not always be given to the accused in every case. Henceforth, by this paper it is proved that the doctrine of benefit of doubt is not suggested by any criminal school of jurisprudence albeit, it is just a concept born from

[13] Md Shahbaz Ali Rapes are heinous crime: These are 10 countries with strict rape laws https://thesecondangle.com/countries-strict-rape-laws/
[14] FRANKLIN, J. (2006) Case Comment–United States v. Copeland, 369 F. Supp. 2d 365 (E.D.N.Y. 2005): quantification of the 'proof beyond reasonable doubt' standard. Law, Probability and Risk, 5, 159–165.
[15] JON O. NEWMAN† United States Court of Appeals for the Second Circuit, 450 Main St, Hartford, CT 06103, USA

god fearing laws and fear of damnation. Thus, this concept is not fulfilling the need of contemporary India and therefore it should be shed away or reformed.